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97TH CONGRESS, 2d Session } HOUSE OF REPRESENTATIVES { REPORT No. 97-681

Y1.1/8:97-681

COMPLETED

EMANUEL F. LENKERSDORF

JULY 29, 1982.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. SAM B. HALL, JR., from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H.R. 2520]

The Committee on the Judiciary, to whom was referred the bill (H.R. 2520), for the relief of Emanuel F. Lenkersdorf, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

On page 2, strike lines 1 through 3 and insert in lieu thereof:

> which are made available to natives of the country of the alien's birth under section 203(a) of the Immigration and Nationality Act or, if applicable, from the total number of such visas which are made available to such natives under section 202(e) of such Act.

PURPOSE OF THE BILL

The purpose of the bill is to grant the status of permanent residence in the United States to Emanuel F. Lenkersdorf, as of the date of enactment of this act. The bill also provides for the payment of the required visa fee and for the deduction of a visa number. The Committee amendment conforms to existing law.

STATEMENT OF FACTS

Beneficiary is a 22 year old native of Mexico and citizen of Germany who resided in Mexico with his parents and moved with them at the age of 9 to the United States. After four years, the parents returned to Mexico with their son. The beneficiary made efforts to migrate back to the United States but was ineligible because the family forfeited their immigration status. Prior to a decision on whether he could re-enter the U.S. as an imigrant, the beneficiary sought a temporary

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visa as a student at the age of 16 and was admitted in that status. He has remained since that time except for vacations each year in Mexico with his parents. The beneficiary last entered the U.S. as a student in 1978 and is now employed in the computer industry.

The pertinent facts in this case are contained in a letter dated November 9, 1981 from the Commissioner of Immigration and Naturalization Service to the Chairman of the Committee on the Judiciary. That letter and accompanying memorandum read as follows:

U.S. DEPARTMENT OF JUSTICE,
IMMIGRATION AND NATURALIZATION SERVICE,
Washington, D.C., November 9, 1981.

WAS 50/31
A18 737 882

Hon. PETER W. RODINO, Jr.
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: In response to your request for a report relative to the bill (H.R. 2520) for the relief of Emanuel F. Lenkersdorf, who is also the beneficiary of S. 311, there is attached a memorandum of information concerning the beneficiary.

The bill provides that the beneficiary shall be held and considered to have been lawfully admitted to the United States for permanent residence as of the date of its enactment, upon payment of the required visa fee. It would also direct that a visa number deduction be made.

The beneficiary, a native of Mexico, is chargeable to the nonpreference portion of the numerical limitation for immigrants.

Sincerely,

DAVID DIXON,
Executive Assistant.
(For the Commissioner).

Enclosure.

MEMORANDUM OF INFORMATION FROM IMMIGRATION AND NATURALIZATION SERVICE FILE RE H.R. 2520

The beneficiary, whose complete name is Emanuel Friedrich Lenkersdorf, a native of Mexico and citizen of both Mexico and Germany, was born on August 29, 1959 in Mexico. He is a citizen of Mexico by birth and a citizen of Germany by derivation from his German citizen parents. The beneficiary resides in Springfield, Virginia at the home of Lillian Baus, who is a friend of the family. He is employed in Washington, D.C. as a Computer Programmer with the Institute of Modern Procedures earning about $1,100 a month. The beneficiary is attending Northern Virginia Community College, Annandale, Virginia. He formerly attended Waverly-Shell Rock High School, Waverly, Iowa and Hawkeye Institute of Technology, Waterloo, Iowa. The beneficiary reports assets of about $3,000.

The beneficiary is single. His parents, both citizens of Germany, are missionaries in Mexico and reside in Mexico. He has no relatives in the United States.

The beneficiary has entered the United States on two occasions. His initial entry was on August 6, 1969 at San Antonio, Texas as a lawful permanent resident alien. He subsequently relinquished that status, at age 13, as a result of continuous residence abroad in excess of one year. He last entered the United States on July 3, 1978 in Chicago, Illinois as a nonimmigrant student with permission to remain for the duration of his status. Deportation proceedings have been instituted against the beneficiary because he is no longer maintaining his status as a student.

Mr. Lenkersdorf is also the beneficiary of S. 331.

A supplementary reported dated March 9, 1982 was provided as well as the Immigration and Naturalization Service decision with respect to the beneficiary's ineligibility to immigrant status.

U.S. DEPARTMENT OF JUSTICE,
IMMIGRATION AND NATURALIZATION SERVICE,
Washington, D.C., March 9, 1982.

A18 737 882

Hon. PETER W. RODINO,
Chairman, Committee on the Judiciary,
House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: This is in reference to the bill (H.R. 2520) for the relief of Emanuel F. Lenkersdorf.

The beneficiary was interviewed by a Service officer on September 3, 1981. A review of the Service file relating to the beneficiary reflects that Mr. Lenkersdorf was lawfully admitted for permanent residence on August 6, 1969 at Chicago. The beneficiary made subsequent entries as a nonimmigrant student on August 17, 1975; August 23, 1976; and July 3, 1978 in Chicago. He also entered the United States as a nonimmigrant on September 19, 1977 at Kansas City.

Sincerely,

DAVID M. DIXON,
Assistant to the Commissioner
(For the Commissioner).

U.S. DEPARTMENT OF JUSTICE,
IMMIGRATION AND NATURALIZATION SERVICE,
Omaha, Nebr.

A18 737 882

In re: Emanuel Friedrich Lenkersdorf.
In behalf of applicant: none.

Application: Waiver of immigrant visa under the provisions of section 211(b) of the Immigration and Nationality Act.

Discussion: The applicant is a 16 year old native and citizen of Mexico who was admitted to the United States as a lawful permanent resident alien on August 6, 1969, as a nonpreference immigrant. He

resided in the United States until sometime in May 1973 when his father, a missionary, accepted work in Mexico and moved the entire family to that country.

On April 6, 1975, the father inquired as to how this applicant could reenter the United States to resume his permanent residence. By notice of May 19, 1975, the father was referred to the nearest American Consular Office in Mexico. The father, by letter on June 18, 1975, apparently wrote to the American Consul at Mexico City and was advised by letter on August 7, 1975, that the applicant must show that he had at no time any intention of abandoning his residence in the United States and that his protracted stay abroad was for reasons beyond his control and for which he was not responsible. The father was further advised that if the applicant was unable to establish the above, it would be necessary to either reapply for this visa or consider returning to the United States to study with a nonimmigrant student visa. The applicant's passport contains a nonimmigrant student visa issued at Mexico City on July 28, 1975, and indicates that he subsequently entered the United States as a student on August 17, 1975.

Subsequent to his admission into the United States as a nonimmigrant student the applicant, through his father, was advised that his application for a nonimmigrant student visa automatically shows that he intends to give up his residence in the United States. The applicant attempts to refute this contention by stating that he did not intend to reject the immigrant visa application, but accepted the student visa since it was the only way for him to be allowed to come to the United States. The applicant further advises that the first time that he realized that an application for a nonimmigrant visa would automatically show that he intended to give up his residence in the United States was when he received word from his father to that effect.

Notwithstanding, the applicant again departed the United States on July 26, 1976, and again applied for, and was admitted on August 23, 1976, as a nonimmigrant student. Therefore, he again accepted benefits as a nonimmigrant, but this time knowing full-well that such acceptance would jeopardize any favorable consideration on his application for reinstatement of his permanent resident status.

He has twice now been admitted to the United States on his claim that he was entering as a nonimmigrant student. Perhaps the first time he was ignorant of the fact that his wilful acceptance of a nonimmigrant status would jeopardize his claim to permanent resident status. However, his second application for, and acceptance of, such nonimmigrant status having full knowledge of the resulting consequences precludes any favorable consideration upon his application.

The term "lawfully admitted for permanent residence" is defined in Section 101(a)(20) of the Immigration and Nationality Act as: the status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, *such status not having changed.* (Emphasis added)

Section 101(a)(33) oft he Act states that the term "residence" means the place of general abode; the place of general abode of a person means his *principal, actual dwelling place in fact, without regard to intent.* (Emphasis added)

Section 211(a) provides that no immigrant shall be admitted to the United States unless at the time of application for admission he has an

unexpired immigrant visa. Title 8, Code of Federal Regulations, 211.1 provides that a valid unexpired immigrant visa shall be presented by each arriving immigrant alien except an immigrant who * * * (b) is returning to an unrelinquished lawful permanent residence after a temporary absence abroad * * * not exceeding one year and presents a form I–151 Alien Registration Recept Card, duly issued him

The applicant admits in his application that he has not had a permanent residence in the United States since May 1973. His place of residence or general abode since May 1973 has been in Mexico.

In the Matter of Sias I & N Decision 11–171, it was held that: Under the definition of the term "residence" in section 101(a)(23) of the Immigration and Nationality Act, intent is not a factor.

Based on the foregoing, it must be concluded that the applicant had relinquished his lawful permanent residence by remaining in Mexico from May 1973 to August 1975, and therefore his application for waiver of immigrant visa must be denied.

Order: It is ordered that the application for waiver of immigrant visa be and is hereby denied.

LEE T. HOPPES,
District Director.

On August 14, 1982 the Department of State submitted the following report:

DEPARTMENT OF STATE,
Washington, D.C., August 14, 1981.

Hon. PETER W. RODINO, Jr.,
Chairman, Committee on the Judiciary, House of Representatives.

DEAR MR. CHAIRMAN: I refer to your request for a report concerning the case of Emanuel F. Lenkersdorf, beneficiary of H.R. 2520, 97th Congress.

The bill would grant the beneficiary permanent residence in the United States as of the date of enactment upon payment of the required visa fee. It also provides for the deduction of one number from the total number of immigrants and conditional entrants who may be admitted from the beneficiary's country of birth.

The United States Embassy at Mexico City, Mexico, where the beneficiary was issued a nonimmigrant visa, has reported that a search of the visa files has revealed no record in the case of the beneficiary. It is assumed that the file was destroyed in accordance with records disposal regulations.

Sincerely,

RICHARD FAIRBANKS,
Assistant Secretary
for Congressional Relations.

Mr. Evans, the author of the bill, submitted the following statement in support of his legislation:

STATEMENT BY REPRESENTATIVE COOPER EVANS IN SUPPORT OF H.R. 2520, A PRIVATE BILL FOR THE RELIEF OF EMANUEL F. LENKERSDORF, MARCH 31, 1982

The beneficiary of H.R. 2520, Emanuel F. Lenkersdorf, was born in Mexico to German parents engaged in missionary work for their church. After attending American and Ger-

man schools in Mexico, this young man and his family moved to the U.S., with permanent resident status, when he was nine. Four years later, when Emanuel was thirteen, the family returned to Mexico when his parents decided to resume their missionary work. After two years in Mexico, where the remote location of his parent's work caused cultural and educational problems, Emanuel returned to the U.S. to continue his education. Since he returned to this country at the age of fifteen, Emanuel has completed high school, taken advanced training in electronics and computer technology at two institutions, and begun a career as a computer programmer.

The two key issues in this case, which must be considered and clarified, are the circumstances of Emanuel Lenkersdorf's departure and return to this country and the hardship which would result if he were again forced to leave the U.S. and return to Mexico. In hearings before this Subcommittee, we have clearly established that the beneficiary, who is now twenty-two, has lived and attended school in this country since the age of nine, except for the two years in rural Mexico following his parents' return to missionary work. Further, had he been able to remain in this country when his parents decided to return to Mexico, or arrange to return to the U.S. sooner, he would have retained his permanent resident status and avoided this situation entirely. Information contained in letters regarding this case, copies of which have been provided to the Subcommittee, clearly supports several key points.

The Lenkersdorfs initiated their effort to learn where and how to qualify their son for a visa as a returning resident well in advance of his date of return.

Responses from INS and the Consul were not timely and conflicted with other responses and information provided during a visit to the Mexico City Embassy which led to Emanuel entering the U.S. on a student visa in order to be here for the beginning of the school year.

Following his return to the U.S., Emanuel applied for a waiver of immigrant visa to restore his permanent resident status. This application was summarily rejected, not because of the circumstances when he obtained his student visa, but because he had returned to Mexico during his summer vacation and again entered the U.S. on the student visa.

The INS and others have put forward the view that there is no extreme hardship involved in sending this young man back to Mexico. In fact, there are several reasons why this creates unusual hardship for Emanuel Lenkersdorf. First, Mexico is not his home. It is a foreign country where his parents are engaged in missionary work. Second, this is not a case of sending a child to rejoin his parents. Emanuel is an adult; educated, self-supporting, and with a career in a technical field, and it is most unfair to treat him otherwise.

Third, the lack of opportunity for employment and cultural adjustment problems which this young man would encounter in a rural, economically underdeveloped area such as the jungle of Southern Mexico, when his skills and language are so completely unsuited for that environment, constitute a treatment which is unjust and extremely harsh.

In view of these considerations, I urge you to support a favorable report on H.R. 2520. I would like to thank the Chairman and members of the Subcommittee for their patience and willingness to establish the facts in a very difficult case. If there are further questions on this case, or if we can provide additional assistance with the extensive information file concerning this matter, my staff and I will be happy to help in whatever way we can.

Mr. Evans also submitted the following documents clarifying the efforts of the beneficiary to reinstate his lawful permanent residence status:

LA CASTALIA,
Comitán, Chiapas, México, April 6, 1975.

Re Lenkersdorf, Emanuel Friedrich, Alien Registration Card A18 737 882.

U.S. DEPARTMENT OF JUSTICE,
Immigration and Naturalization Service,
Cincinnati, Ohio.

DEAR SIR: In May 1973 I accepted missionary work among the Indians of Mexico. For this reason I left the U.S.A. where I was registered as a resident alien, Alien Registration Card A18 736 773. My wife and our two minor children followed me.

Our son Emanuel Friedrich Lenkersdorf, age 15, wants to return to the States and live with his god-parents in Waverly, Iowa. His absence from the State has been over a year. Would you, please, inform us whether he may re-enter the U.S.A, with his Alien Registration Card or which procedures are we to follow.

Waiting for your kind reply I remain
Sincerely yours,

KARL LENKERSDORF.

CINCINNATI, OHIO 45201, *May 19, 1975.*

A18 737 882
Your correspondence dated April 6, 1975

KARL LENKERSDORF,
Direccion postal, La Castalia,
Comitan, Chiapas, Mexico.

Please advise your son Emanuel Friedrich to contact the American consul in Mexico nearest his residence for information to reenter the United States.

M. R. GREY,
Officer in Charge.

EMBASSY OF THE UNITED STATES OF AMERICA,
Mexico, D.F., Mexico, August 7, 1975.

Mr. KARL LENKERSDORF,
La Castalia,
Comitan, Chiapas, Mexico.

DEAR MR. LENKERSDORF: I have received your letter of June 18 regarding the desire of your son, Emanuel Friedrick Lenkersdorf, to return to the United States as a resident.

Because your son has been outside the United States for over a year, he has lost his legal resident status. In order to qualify for an immigrant visa as a returning resident, he must show that he at no time had any intention of abandoning his residence in the United States and that his protracted stay abroad was for reasons beyond his control and for which he was not responsible. If he cannot establish the above, he should either reapply for an immigrant visa or consider returning to the United States to study with a nonimmigrant student visa.

Please be assured that this case will continue to receive every consideration consistent with the immigration law of the United States.

Sincerely yours,

DONNA J. HAMILTON,
American Consel.

LA CASTALIA,
Comitán, Chiapsa, August 15, 1975.

Re: your letter of August 7, 1975

Ms. DONNA J. HAMILTON,
American Consul, Embassy of the United States of America, Mexico D.F., Mexico.

DEAR MS. HAMILTON: Thank you very kindly for your letter we received yesterday. In July we were in Mexico City at the U.S. Embassy to arrange for the reentry of our son Emanual Friedrich. We tried to speak to you in person and explain the case of him as a returning resident. Unfortunately we were not admitted to see you.

Following the indications of your letter in regard to our son, "in order to qualify for an immigrant visa as a returning resident he must show that he at no time had any intention of abandoning his residence in the United States and that his protracted stay abroad was for reasons beyond his control and for which he was not responsible.

This is exactly his case. After almost 4 years of residence in Yellow Springs, Ohio we left the United States on May 1, 1973 as I accepted to do mission work among the Indians of the Highlands of Chiapas. Our son protested strongly against this move, but being at that time just 13 years of age he had no other alternative than going with us. He stayed with us for reasons beyond his control and not due to his responsibility and with the continuing desire to live in the United States.

Now his godparents, the Rev. Dr. Herman Diers and his wife, Dorothy invited him to live with them and continue his education. They accept legal guardianship for our son according to the Statutes of Iowa, District Court of the State of Iowa in and for Bremer County. For the time being our son will enter the U.S. with a student visa F–1

and his address will be: Emanuel F. Lenkersdorf, c/o the Rev. Dr. Herman Diers, 703 Second Ave., N.W., Waverly, Iowa 50677.

His alien resident card has the number A18 737 882.

My wife and I regretted at that time that our son objected to our move to Mexico where we went for moral and Christian reasons but we fully realized that we could neither change his mind nor could have left him alone in the States.

We kindly ask you to consider this request to acquire again his legal resident status.

Sincerely yours,

KARL LENKERSDORF.

EMBASSY OF THE UNITED STATES OF AMERICA,
Mexico, D.F., Mexico, September 11, 1975.

Mr. KARL LENKERSDORF,
La Castalia,
Comitán, Chiapas.

DEAR MR. LENKERSDORF: I have received your letter of August 15 regarding your son, Emanuel Frederick.

If your son has not yet traveled to the United States with his student visa, he should come to the Embassy immediately so that we may look into processing a visa for him as a returning resident. By applying for a nonimmigrant visa, a person automatically shows that he intends to give up his residence in the United States. Please note that in my letter of August 7, I suggested that your son apply for a student visa if you felt he could not qualify as a returning resident.

Please let me know what the current status of your son's situation is.

Sincerely yours,

DONNA J. HAMILTON,
American Consul.

LA CASTALIA,
Comitán, Chis., September 20, 1975.

Re your letter of September 11, '75 concerning Emanuel F. Lenkersdorf.

Ms. DONNA J. HAMILTON,
American Consul,
American Embassy,
México, D.F.

DEAR MS. HAMILTON: Thank you for your letter of September 11. You state that our son "by applying for a non-immigrant visa automatically shows that he intends to give up his residence in the United States."

May I clarify. When we went late in July to the U.S. Embassy in Mexico City we were referred to Mr. O'Neill (I believe that is his name) at the Naturalization & Immigration Section. We had a long discussion with him to request a visa as returning resident for our son. He told us that this was not possible unless we, the parents, return to the States. So we went to Mr. Rosales to whom we were referred and tried again applying for a visa as returning resident. As far as I recall he talked to you over the phone, it might have been with another person that he talked. Anyway we were turned down with our application.

After these efforts we felt forced that the only way to reenter the States was via applying for a student visa least our son misses the beginning of the school year on August 25. In other words we were not informed that this meant automatically the lack of intention to maintain the resident status. It was rather that the information we were given made it seem impossible to receive the returning resident visa. When your letter arrived things seemed different. For this reason I replied to your previous letter in the hope that our son's resident status might be renewed with a returning resident visa.

In the meantime our son is in the U.S. and entered with a student visa. May I ask you most kindly to reconsider his case and see if possible that he obtain a returning resident visa. He is staying with his godparents Dr. & Mrs. Herman Diers who are his legal guardians at 703 Second Ave. N.W. Waverly, Iowa 50677.

Sincerely yours,

KARL LENKERSDORF.

U.S. DEPARTMENT OF JUSTICE,
IMMIGRATION AND NATURALIZATION SERVICE,
Omaha, Nebr., October 17, 1975.

402–221–4651

HERMAN DIERS,
Waverly, Iowa.

DEAR MR. DIERS: Guardianship, or adoption after the age of 14, would confer no advantage under the immigration laws.

Except for the spouses, parents and children of Americans, there is a waiting period of about 28 months for an immigrant visa under the quota for the Western Hempishere. The American Consul to whom application is made for a visa will advise concerning the requirements to be met before a visa may be issued.

Very truly yours,

LEE T. HOPPES,
District Director.

WAVERLY, IOWA, *January 17, 1976.*

IMMIGRATION AND NATURALIZATION,
Omaha, Nebr.

DEAR SIR: My name is Emanuel Lenkersdorf and I'm sixteen years of age.

Right now, fortunately, I am living in the U.S.A. My parents are originally Germans. They have come to the U.S. Chicago University, about twenty years ago. After about two years, they went to Canada. They spent a few years up there and after that they moved to Mexico City. There, I was born. My dad has his P.H.D. in Philosophy and Theology and he has taught at the National University of Mexico (UNAM) and at the University of the Americas—an American University. He is also a minister. After about 10 years, this university moved to a distant city in Mexico called Puebla. So my dad moved to the U.S.A. again, to Yellow Springs, Ohio. There he taught at Antioch College for about four years. At that time, Aug. 6, 1969, I was admitted into the United States as an immigrant with registration number A 18–737–882. On May 10, 1973, my parents left the U.S. again. My father began serving as a missionary to Indian people in the Mexican State of Chiapas. I did not want to leave the U.S. but since I was only 13 years old, I was forced to go along with my parents. For 2 years

I tried to get along there, but after that I couldn't stand it any longer. It was practically impossible for me to get a good education down there; that was the main reason I wanted to leave, but there are also other reasons. So, very fortunately, my dear godparents, Rev. Herman and Dorothy Diers, have invited me to live over at their house to study my remaining high school years. Naturally, I accepted! So, in July 1975, I went to Mexico City to the American Embassy to get my visa renewed. I've tried just about everything within the book and I've talked to several consuls, but they would simply not renew it. The only other alternative we had left was to get a student visa, which, thank God, I did get. About three weeks later, August 17, I went to Waverly, Iowa, to my godparents. A couple of weeks after I got up here, my dad received another letter from the American Embassy in Mexico City saying that if I could prove that my parents decision of going to Mexico was beyond my will, and that I never have had the intention of going down there, my visa could be renewed. As I have already indicated, this was exactly my situation; and that is what my dad wrote to the embassy. A few weeks later they replied that, since I have applied for a student visa, I automatically indicated that I did not want the immigrant visa any more. But this was not true in my situation. So then, my dad wrote them again saying that since they didn't renew my old visa, I had no choice but to apply for the student visa. Since that time, the U.S. Embassy has never written us again.

(I also have copies of all the letters that we have sent them, and of the letters that they have sent us; in case they would interest you, I can send them to you.)

In two years though, July 1977, my Mexican passport expires. And as you know, in order for me to be up here on a student visa, I need a valid passport. The big problem now is, that Mexico, very unfortunately, will not renew my passport unless I go down there again and do a military service for them, for a whole year; and I would just hate having to do that! So I beg you sir, if you could please, help me in any way possible, just so that I wouldn't have to go down there again. The best way, it seems to me, is to have my immigrant visa renewed if possible. Otherwise, is there any way that I can get another permanent immigrant visa before my passport expires?

I would like to telephone you after I receive your reply, so would you please give me the phone number where I can contact you. As you might see, I must like the United States pretty well, if I prefer that than staying at home with my parents. Thank you very much.

Sincerely,

EMANUEL LENKERSDORF.

U.S. DEPARTMENT OF JUSTICE,
IMMIGRATION AND NATURALIZATION SERVICE,
Omaha, Nebr., April 12, 1976.

A18 737 882

HERMAN DIERS,
Waverly, Iowa.

DEAR MR. DIERS, This refers to your inquiry of March 22, 1976, concerning Emanuel Lenkersdorf. We are awaiting the Embassy file on this case. When it is received Emanuel will be further advised.

Sincerely,

LEE T. HOPPES,
District Director.

WAVERLY, IOWA, *May 2, 1976.*

IMMIGRATION AND NATURALIZATION,
Omaha, Nebr.

DEAR SIR: My name is Emanuel Lenkersdorf. I hope you remember me. I have written to you several times in the past about various problems I'm facing. Unfortunately, there are some new problems now, of which I shall inform you later on.

Some weeks ago, I have received a letter from you stating that my file is on its way from the United States Embassy in Mexico to your Office in Omaha. I would please, as soon as possible, like to know if it is possible for you to renew my old immigrant visa. I hope that this will be possible. It is only in the event that such a renewal is not made in time that I would need action on the special request I am making in this letter.

My student visa expires July, 1976. At that time I plan to apply for an extension for that same visa, for another year. I have read on the application form, though, that my passport has to be valid for six months after the expiration of my student visa. My problem is that my passport expires July 1977 and that Mexico will not renew my passport unless I go down there for one whole year and do a military service for them. Only after that time could I get a new passport.

Because of the date of my passport expiration I would be eligible for an extension of my student visa only until January of 1977. However, that would come when I am only half way through my senior high school year and would prevent me from finishing my high school work here. (I am already registered for full time studies at the Waverly-Shell Rock high school, next year.)

Please advise me about the procedure I should use in applying for an extension which will allow me to finish my high school work here. I would be able to complete it easily before my passport expires next July of 1977.

Thank you very much, Sir. Hopefully I will hear from you soon.

Sincerely yours,

EMANUEL LENKERSDORF.

WAVERLY, IOWA, *June 30, 1976.*

Mr. LEE T. HOPPES,
Immigration and Naturalization Service,
U.S. Department of Justice,
Omaha, Nebr.

DEAR MR. HOPPES, Please allow me to write in support of the application of Emanuel Lenkersdorf for the reinstatement of his Immigrant Visa.

First, there is no question but that his protracted stay abroad was "for reasons beyond his control and for which he was not responsible." In addition to the statement made by Emanuel's father on the matter, I have letters in my file which were written before this application for reinstatement was ever considered indicating Emanual's opposition to their moving to Mexico and remaining there. It was (and is) a great disappointment to his parents, and it created a difficult situation in their home. They were eager for him to learn to like it in Mexico, but Emanuel's opposition was so serious that they finally felt

compelled to make arrangements for him to leave home so he could return to the United States and continue his education here. It was entirely against Emanuel's will that he remained in Mexico as long as he did. There can be no question about that. The circumstances certainly fit the requirement outlined by Ms. Hamilton in her letter of August 7.

Second, that leaves the question about whether he forfeited his U.S. residence by making the application for a student visa on July 25, 1975. You will understand that Emanuel's father began writing for information on how to proceed on April 6. Not until the middle of July did he receive instructions about where to apply. He wrote the embassy in Mexico City on June 18. Since he had not heard by the last week in July and time was running out, he and the family made a long and costly trip to Mexico City in order to find out the proper procedure. They were at the embassy a number of times spread out over several days, standing in long lines, in order to accomplish this. Their primary concern was to see the consul in person in order to get advice from the best authority available. However, in spite of all their efforts they were never allowed to see the consul in person.

The people at the embassy whom they were able to see told them that there was no possibility of having the immigrant visa reinstated and that the only way he could get into the U.S. was through a student visa, so, in keeping with this advice, he applied for and received a student visa.

More than two weeks later they received a letter from the consul (Donna J. Hamilton) advising them that Emanuel could qualify for an immigrant visa as a returning resident provided that he could show "that he at no time had any intention of abandoning his residence in the United States and that his protracted stay abroad was for reasons beyond his control and for which he was not responsible." Only in that letter were they first advised that "if he cannot establish the above [i.e., qualify as a returning resident], he should either reapply for an immigrant visa or consider returning to the United States to study with a nonimmigrant student visa." However, they still had no way of knowing that the student visa application ruled out the possibility of reinstating Emanuel's immigrant status.

In his reply Emanuel's father provided the necesary information as a basis for the reinstatement of Emanuel's immigrant status and informed the counsel of the student visa arrangements which had been made already back in July.

It was for the first time in response to this letter that the consul advised them in a letter dated September 11 that by applying for the student visa Emanuel "automatically shows that he intends to give up his residence in the United States." Of course, quite the opposite had been Emanuel's intention because at the time he was acting on the only advice available to him as to how he could have U.S. residence.

It is my judgment that Emanuel and his family did everything that could have been expected of them regarding the papers for Emanuel's return to residency in the U.S. The technical violation of applying for the student visa was done not because Emanuel intended to give up his residence in the U.S. It was done on the basis of advice given to him at the embassy which was in conflict with the information which he received later by letter from the consul.

The substance of the request in this application is that the Immigration Service recognize that the procedure followed by Emanuel was based on the advice given to him and that the conflict between the two levels of information and the timing were beyond the control of the Lenkersdorfs. This would mean that the situation would be returned to the invitation of the consul in her September 11 asking that Emanuel "should come to the Embassy immediately so that he may look into processing a visa for him as a returning resident."

Your favorable judgment on this request will be sincerely appreciated. Thank you for your kind attention to this additional clarification.

Sincerely,

HERMAN W. DIERS.

P.S. Three of the key letters have copies enclosed, although you probably have copies already.

BUDGETARY INFORMATION

This legislation does not provide new budget authority and no estimate or comparison has been received from the Director of the Congressional Budget Office.

OVERSIGHT STATEMENT

The Committee exercises general oversight jurisdiction with respect to all immigration and nationality matters but no specific oversight is contemplated in this instance.

COMMITTEE RECOMMENDATIONS

Upon consideration of all the facts in this case, the Committee is of the opinion that H.R. 2520, as amended, should be enacted and accordingly recommends that the bill do pass.

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